

General Permit



DEVELOPMENT ALONG OR ADJACENT TO A STREAM

Floodplain Development General Permit

Permit Number: KY FPGP

AI No.: 35050

Pursuant to Authority established in KRS Chapter 151,

Development activities that occur in a floodplain for the base flood event and that meet the eligibility requirements of this permit,

are authorized along or adjacent to a stream in areas located within the 120 counties of the Commonwealth of Kentucky,

in accordance with the requirements of 401 KAR 4:060, and other conditions set forth in this permit.

This permit shall become effective on 7/1/2020.

This permit and the authorization shall expire 6/30/2025.

Date Signed

Paul Miller, Director

Division of Water

DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water, 300 Sower Blvd, Frankfort, Kentucky 40601

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SECTION 1

PERMIT COVERAGE

1. PERMIT COVERAGE

Coverage under this General Permit issued by the Kentucky Division of Water (the "Division"), allows for development activities along or adjacent to a stream, that meet the eligibility requirements established in this permit, and that do not increase the Base Flood Elevation in any community.

Development meeting the requirements of this General Permit shall have automatic coverage under this general permit without making application or submitting plans and specifications to the Division.

Proposed development with the potential to change the Base Flood Elevation shall require an application for an Individual Floodplain Development Permit to Construct Along or Across a Stream pursuant to 401 KAR 4:060.

The property owner or entity employed to develop the property (the "Permittee"), and who is authorized for coverage under this General Permit by the Division, is exempt from public notice requirements as long as the development is conducted in accordance with the requirements of this General Permit.

This General Permit is issued pursuant to KRS 151.250 and 401 KAR 4:060 regarding stream obstruction only and does not constitute certification of any other aspect of proposed development. Ongoing development shall comply with the terms and conditions of this General Permit within 90 days of its effective date, and new development shall comply with the terms and conditions of this General Permit upon beginning eligible development activities.

Work performed by or for the Permittee that does not fully conform to the limitations set forth in this General Permit is subject to partial or total removal and enforcement actions pursuant to KRS 151.280 as directed by the Kentucky Department for Environmental Protection and KRS 151.125 under the authority and powers of the Secretary.

The Permittee shall contact the Division of Water, Water Resources Branch, at (502) 564-3410 or at 401WQC@ky.gov to determine if a Water Quality Certification is required. If required, the Permittee shall obtain a Water Quality Certification from the Division before beginning development.

The Permittee shall contact the Division of Water, Surface Water Permit Branch at (502) 564-3410 or at SWPBsupport@ky.gov to determine if a Stormwater Construction Permit is required. If required, the Permittee shall obtain a Stormwater Construction Permit from the Division before beginning development.

The Permittee is liable for any damage resulting from the development, operation, or maintenance of the activities covered by this permit.

SECTION 2

EXCLUSIONS AND ELIGIBILITY

2. EXCLUSIONS AND ELIGIBILITY

2.1. Exclusions

- 1) Development not meeting the eligibility requirements listed in Section 2.2 of this General Permit shall require an application to be submitted to the Division for an Individual Floodplain Development Permit to Construct Along or Across a Stream, pursuant to 401 KAR 4:060.
- 2) Development with the potential to affect the Base Flood Elevation in a community shall require an application to be submitted to the Division for an Individual Floodplain Development Permit to Construct Along or Across a Stream, pursuant to 401 KAR 4:060.
- 3) Development in a stream or wetland that requires an Individual Water Quality Certification pursuant to 401 KAR 9:010 from the Division is not eligible for coverage under this General Permit.
- 4) Activities occurring adjacent to or in the floodplain associated with Special Use Waters, Exceptional Waters, or Outstanding State Resource Waters are not eligible for coverage under this General Permit. A map of waters of the Commonwealth may be obtained at the following internet address: watermaps.ky.gov/WaterHealthPortal.
- 5) Development of residential, non-residential, or appurtenant structures located in the base floodplain shall not be eligible for, nor granted, coverage under this General Permit.
- 6) Development of dams or other water impounding structures, or construction that does or may endanger life or cause property damage shall not be eligible for, nor granted, coverage under this General Permit.

2.2. Eligibility

The following activities are eligible for coverage under this General Permit:

- 1) Development constructed by the US Army Corps of Engineers;
- 2) Uses of open space as established in 44 CFR 80.19;
- 3) Stream obstruction removal, such as the removal of woody debris from a bridge or culvert after a storm event, that is completed as described in the Watershed Friendly Stream Maintenance guidance, and that does not result in materials being deposited in the floodplain for the base flood event. A copy of this guidance may be obtained at the following internet address: <https://eec.ky.gov/Environmental-Protection/Water/FloodDrought/Documents/StreamMaintenanceGuideFAQ.pdf>
- 4) Normal property maintenance activities that are done by hand such as cuttings, plantings, and temporarily placing woody debris in piles. Maintenance activities shall be completed and all materials removed from the base floodplain within 15 days;
- 5) Development of a below-grade swimming pool outside of the regulatory floodway;
- 6) Development and placement of utility poles, open-frame towers, or monopole towers with below grade foundations;
- 7) Development of below-grade utilities (e.g. water lines, pipelines, etc.);
- 8) Development and placement of an open-style guardrail along an existing roadway;
- 9) Geotechnical investigations, archeological investigations or installation of monitoring wells;
- 10) Repairs or maintenance to an existing shallow and narrow, man-made drainage-way, such as a swale or a ditch between two buildings. The man-made drainage-way cannot be mapped as having its own base floodplain. (A portion of the man-made drainage-way

may empty into a larger waterbody that has a mapped base floodplain. For example, a ditch between two buildings that flows into an adjacent stream);

- 11) Development and placement of a fence that does not impede flow during a base flood event, as long as the fence is not constructed across a stream or wetland;
- 12) Locating a recreational vehicle that is fully licensed and ready for highway use in the floodplain for the base flood event for less than 180 consecutive days;
- 13) Removal of gravel or vein minerals from a stream by the Permittee for personal, noncommercial use that is completed as outlined in the Watershed Friendly Stream Maintenance guidance. Excavated materials shall not be placed along the banks of the stream or within the base floodplain. Eligibility for coverage under this General Permit shall be limited to fifty (50) tons or less excavated in twelve (12) successive calendar months in accordance with KRS 350.245. Eligibility for coverage under this General Permit shall not include removal of gravel or vein minerals that will be sold or transported on public roadways; or
- 14) Development in a watershed less than one square mile (1 mi^2), except for dams, structures impounding water, or residential or non-residential construction as established in Section 2.1, item 6 of this General Permit.

SECTION 3

REQUIREMENTS

3. PERMIT REQUIREMENTS

- 1) The Permittee shall maintain access to a copy of this General Permit at the development site.
- 2) Prior to beginning development, the Permittee shall obtain a local floodplain development permit if the county/city/community is an eligible or participating community in the National Flood Insurance Program. Upon completion of the development, the Permittee shall obtain final written approval from the local permitting agency confirming compliance with the requirements of the local floodplain ordinance.
- 3) All excess debris and material from development activities shall be removed from the base floodplain. Upon completion of development, the site shall not exceed original grade elevation.
- 4) The Permittee shall at all times minimize the size of the disturbance and the period of time that the disturbed area is exposed without stabilization practices. The following practices shall be adhered to:
 - a. Erosion prevention measures, sediment and silt control measures, and other site management practices shall be designed, installed, and maintained in an effective operating condition to prevent off site migration of sediment.
 - b. Erosion prevention measures include, but are not limited to, erosion control mats/blankets, and mulch/straw, and shall be implemented on disturbed areas within 24 hours or as soon as practical after completion of disturbance or following cessation of activities.
 - c. Standard silt control practices shall be used in such quantity to prevent siltation of waters of the Commonwealth. Practices that are acceptable include silt fences, rock check dams, and straw-bales.
 - d. Permanent vegetation shall be placed on the disturbance area within 14 days or as soon as possible upon completion of development.
- 5) The entry of mobile equipment into a stream channel shall be prohibited.
- 6) Measures shall be taken to prevent possible spills of fuels and lubricants from entering waters of the Commonwealth. Any spill or discharge to waters of the Commonwealth shall be reported to the Department for Environmental Protection within 24 hours by calling the Cabinet's Environmental Emergency Response Line at 1-(800)-928-2380.
- 7) Violations of the requirements of this General Permit are subject to enforcement action under KRS 151.182 and penalties under KRS 151.990.

SECTION 4
OTHER CONDITIONS

4. OTHER CONDITIONS

4.1. Schedule of Compliance

The Permittee shall be in compliance with the requirements of this General Permit within 90 days of its effective date through the completion of development. This General Permit does not require a submission of an application to the Division, and therefore General Permit requirements for new development shall be met from the time an eligible activity begins through the completion of development. Should the Division determine the Permittee failed to comply with the requirements of this General Permit, the coverage may be terminated and the Permittee may be required to obtain an Individual Floodplain Development Permit to Construct Along or Across a Stream.

4.2. Other Permits

This General Permit has been issued under the provisions of KRS Chapter 151 and administrative regulations promulgated pursuant thereto. Issuance of this General Permit does not relieve the Permittee from the responsibility of obtaining any other permits or licenses required by this Division and other state, federal, and local agencies.

4.3. Continuation of Expiring Permit

In the event this General Permit expires prior to reissuance by the Division, the conditions and requirements of this General Permit shall continue in effect until the Division reissues or revokes the permit. However, new or expanded development is not eligible for coverage under this General Permit while it is expired until the General Permit is reissued.

4.4. Application for Permit

The Permittee is not required to submit an application for coverage under this General Permit. All eligible development activities shall be granted automatic coverage.

4.5. Duty to Comply

The Permittee shall comply with the conditions of this General Permit. Violations of the requirements of this General Permit are subject to enforcement action as established in KRS 151.182, and penalties under KRS 151.990, or revocation of coverage under this General Permit.

4.6. Need to Halt or Reduce Activity Not a Defense

Any work performed by the Permittee that does not fully conform to the limitations established in this General Permit is subject to partial or total removal, and to enforcement actions as established in KRS 151.280 as directed by the Division. It shall not be a defense in an enforcement action for a Permittee to claim that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this General Permit.

4.7. Duty to Mitigate

The Permittee shall take all reasonable steps to minimize or prevent any discharge or disposal in violation of this General Permit which has a reasonable likelihood of adversely affecting human health or the environment.

4.8. Change of Scope of Work

Notifying the Division of planned changes or anticipated noncompliance does not stay any condition of this General Permit.

4.9. Property Rights

The issuance of this General Permit by the Division does not convey any property rights of any kind or any exclusive privilege.

4.10. Duty to Provide Information

The Permittee shall furnish to the Director of the Division of Water (the "Director"), within the requested time frame, any information which the Director may request to determine compliance with this General Permit.

4.11. Inspection and Entry

The Permittee shall allow the Director or an authorized representative (including an authorized contractor acting as a representative of the Director), upon presentation of credentials and other documents as may be required by law, to:

- 1) Enter upon the development area where an activity covered under this General Permit is located or conducted, or where records are kept under the conditions of this General Permit;
- 2) Have access to and copy, at reasonable times, any records that are kept under the conditions of this General Permit;
- 3) Inspect at reasonable times any facilities, equipment practices, or operations regulated or required under this General Permit; and
- 4) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by KRS Chapter 151, any substances or parameters at any location.

FACT SHEET



DEVELOPMENT ALONG OR ADJACENT TO A STREAM

FACT SHEET

Floodplain Development General Permit

Permit No.: KY FGP

Agency Interest No.: AI# 35050

Date: April 27, 2020

Public Notice Information

Public Notice Start Date: 4/27/2020

Comment Due Date: 5/27/2020

General information concerning the public notice process may be obtained on the Division of Water's Public Notice Webpage at the following internet address:

<https://eec.ky.gov/Environmental-Protection/Water/Pages/Water-Public-Notices-and-Hearings.aspx>.

Public Notice Comments

Comments must be received by the Division of Water no later than 4:30 PM on the closing date of the comment period. Comments may be submitted by e-mail at: DOWPublicNotice@ky.gov or written comments may be submitted to the Division of Water, Water Resources Branch, at 300 Sower Blvd, Frankfort, Kentucky 40601.

Reference Documents

A copy of this proposed fact sheet and proposed General Permit may be obtained from the Division of Water's Public Notice Webpage, under the "Search Public Notices" tab, and Floodplain General Permit tab, at the following internet address:

<https://eec.ky.gov/Environmental-Protection/Water/Pages/Water-Public-Notices-and-Hearings.aspx>.

Open Records

Copies of publicly-available documents may be obtained from the Department for Environmental Protection Central Office, Open Records Coordinator, at (502) 782-6849 or by e-mail at:

EEC.KORA@ky.gov.

DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water, 300 Sower Blvd, Frankfort, Kentucky 40601

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SECTION 1

FACILITY SYNOPSIS

5. FACILITY SYNOPSIS

5.1. Introduction

Kentucky's Revised Statutes, KRS 151.250, state that a person shall not construct across, along, or adjacent to a stream or in the floodway of a stream, unless a permit from the Division of Water ("Division") is issued as established in Kentucky Administrative Regulations, 401 KAR 4:060, Section 2.

As established in KRS 151.250 and 401 KAR 4:050, the Division may allow development along or adjacent to streams without requiring a permit if the actions or proposed actions are of such nature or location as the development will not change the Base Flood Elevation, and is of such nature or action as to have minimal potential for damage or flooding impacts beyond the local area of the action.

Proposed development with the potential to change the Base Flood Elevation shall require an application for an Individual Floodplain Development Permit to Construct Along or Across a Stream as established in 401 KAR 4:060.

The Division is issuing this Floodplain Development General Permit ("General Permit") for activities and structures that do not impact or result in an increase in the Base Flood Elevation during occurrences of base flood discharge. This is consistent with the Code of Federal Regulations (CFR) 44 CFR 60.3, 44 CFR 80.19, and satisfies the requirements of 44 CFR 59.

5.2. Permitting Action

This is the first issuance of a Floodplain Development General Permit for persons who are developing and using land along or adjacent to a stream, and that meet the eligibility requirements outlined in this General Permit, and do not change the Base Flood Elevation.

5.3. Location

This General Permit covers development activities within the 120 counties of the Commonwealth of Kentucky.

5.4. Permit Coverage

All eligible development shall comply with the terms and conditions of the General Permit within 90 days of its effective date through the completion of development. General Permit requirements for new development after the effective date of this General Permit shall be met from the time an eligible activity begins through the completion of development. Coverage under this General Permit is consistent with KRS 151.250, 401 KAR 4:060, 44 CFR 80.19, and 44 CFR 60 regarding development along a stream only, and does not constitute certification of any other aspect of proposed development, construction, or stream obstruction.

5.5. Definitions

The following selected definitions established in KRS 151.100, 401 KAR 4:060, 405 KAR 5:002, and 44 CFR 59.1, are provided for clarification.

Base Flood: The flood having a one (1) percent chance of being equaled or exceeded in any given year, also called the 100-year frequency flood.

Base Floodplain: The area along, adjacent to, and including a stream, which is inundated by the base flood on that stream. Also defined as Special Flood Hazard Area (SFHA).

Base Flood Elevation (BFE): The elevation of the water surface measured above mean sea level, as defined on the applicable FEMA Flood Insurance Rate Map in either the NGVD 1929 or NAVD 1988 vertical datum, reached during the base flood event.

Cabinet: The Energy and Environment Cabinet.

Community: Any State, area, or political subdivision which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.

Dam: Any artificial barrier, including appurtenant works, which does or can impound or divert water, and which either: (a) is or will be twenty-five (25) feet or more in height from the natural bed of the stream or watercourse at the downstream toe of the barrier, as determined by the cabinet; or (b) has or will have an impounding capacity at maximum water storage elevation of fifty (50) acre-feet or more.

Development: Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Division: The Kentucky Division of Water.

Director: The Director of the Kentucky Division of Water.

Dredging Operation: Surface disturbance of dredging river or creek sand and gravel.

Eligible Community or Participating Community: A community for which the Federal Insurance Administrator has authorized the sale of flood insurance under the National Flood Insurance Program.

Flood Frequency: A statistical expression of the average time period between floods equaling or exceeding a given magnitude.

Flood or Flooding: A general and temporary condition of partial or complete inundation of normally dry land areas.

Floodplain or flood-prone area: Any land area susceptible to being inundated by water from any source (see definition of "flooding").

Man-made Waterway: A man-made feature, usually long and narrow ditch or swale dug into the earth that conveys water away from a building for property drainage or stormwater management.

Manufactured Home: A structure which is transportable in one or more sections, and is built on a permanent chassis and designed for use with or without a permanent foundation when connected to utilities; but does not include recreational vehicles placed on a site for less than 180 consecutive days.

Mineral Operation: Non-coal mining activities including: mining of limestone and dolomite; mining of sand and gravel; surface disturbance of dredging of river or creek sand and gravel; mining of clay; mining of tar sand or rock asphalt; mining of fluorspar and other vein minerals. Mineral operations include the surface disturbance of underground mining as well as strip mining. This term includes

mining activities and all activities necessary and incident to the reclamation of the mine or dredging operation as required by this title. This term does not include coal mining or oil shale mining.

National Flood Insurance Program: A federal program which makes available flood insurance protection to property owners in flood prone areas.

Open Style Guardrail: A roadside barrier, or a longitudinal barrier, used to shield motorists from natural or man-made obstacles located along either side of a traveled way. Open stylings includes tension cables, W-beam, ironwood aesthetic, box beam, or the Midwest Guardrail System. Open style does not include low profile barriers, New Jersey style barriers, concrete barriers, moveable barriers, constant slope barriers, cushion walls, or masonry walls. This is consistent with the American Association of State Highway and Transportation Officials (4th Edition, Chapter 5).

100-year Flood: A flood of a magnitude having a one (1) percent chance of occurring in any given year; this is the same as "base flood".

Permit: Written approval for any construction across, along, or adjacent to a stream subject to the provisions of KRS 151.250.

Recreational Vehicle: A vehicle that is: built on a single chassis; 400 square feet or less when measured at the largest horizontal projection; designed to be self-propelled or permanently towable by a light duty truck; and designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Regulatory Floodway: The stream channel and that portion of adjacent land area that is required to pass flood flows without raising the base flood elevation by more than one (1) foot; the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Special Flood Hazard Area (SFHA): The land area covered by the floodwaters of the base flood is the Special Flood Hazard Area (SFHA) on NFIP maps. The SFHA is the area where the National Flood Insurance Program's (NFIP's) floodplain management regulations must be enforced and the area where the mandatory purchase of flood insurance applies. The SFHA includes Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A.

Stream: Any river, creek or channel, having well defined banks, in which water flows for substantial periods of the year to drain a given area, or any lake or other body of water in the Commonwealth.

Structure: An object constructed or installed which may be an obstruction to flood flows such as buildings, manufactured homes, towers, smokestacks, and overhead transmission lines.

Water or Waters of the Commonwealth: Includes any and all rivers, streams, creeks, lakes, ponds, impounding reservoirs, springs, wells, marshes, and all other bodies of surface or underground water, natural or artificial, situated wholly or partly within or bordering upon the Commonwealth or within its jurisdiction.

Watershed: All the area from which all drainage passes a given point downstream.

SECTION 2

PERMIT CONDITIONS AND JUSTIFICATIONS

6. PERMIT CONDITIONS

The General Permit conditions comply with 401 KAR Chapter 4 of the Kentucky Administrative Regulations, which were promulgated under the requirements of Kentucky Revised Statutes Chapters 13A, 151, and 224.

6.1. Exclusions

In accordance with 401 KAR 4:060, development, activities, and structures with the potential to change the Base Flood Elevation shall require an application for an Individual Floodplain Development Permit for Construction Along or Across a Stream. The Exclusions set forth in this General Permit are consistent with KRS 151.250, 401 KAR 4:060, 401 KAR 9:010, and 401 KAR 10:030

6.2. Eligibility

The eligibility requirements are consistent with KRS 151.250, 401 KAR 4:050, 401 KAR 4:060, 44 CFR 60, 44 CFR 64, and 44 CFR 80, which establish the authority and criteria to allow activities, uses, and development along or adjacent to a stream that will not change the Base Flood Elevation, and are of such nature or action as to have minimal potential for damage or flooding impacts beyond the local area of the action.

Eligibility to remove gravel and other vein minerals from a stream by a landowner for personal use is consistent with KRS 350.245 and KRS 350.300.

6.3. Permit Requirements

The General Permit requirements are necessary to comply, and are consistent, with KRS 151.110, which states that the duties of the Cabinet are to protect the use and availability of water; to prohibit the pollution of water resources; and to maintain normal flow of all streams so that quantity and quality of water are available to people of the Commonwealth. Permitting actions are also necessary for compliance with 44 CFRE 59, the National Flood Insurance Act.

6.4. Other Conditions

The criteria are consistent with KRS 151.110, KRS 151.182, and KRS 151.280 which allow permit conditions that, in the best professional judgment of the Cabinet, are necessary to comply with referenced statutes.



SECTION 3

PERMIT APPLICATION REQUIREMENTS

7. PERMIT APPLICATION REQUIREMENTS

An application is not required to receive coverage under this General Permit. This is consistent with KRS 151.250 and 401 KAR 4:050, which establish criteria for development along or adjacent to streams without requiring a permit if the actions or proposed actions are of such nature or location as the development will not change the Base Flood Elevation, and are of such nature or action as to have minimal potential for damage or flooding impacts beyond the local area of the action.

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